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3/10/2011

Montana State Legislature  
Senate Ag Committee

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 3-10-11

BILL NO. HB 541

Dear Chairman Steinbeisser, members of the Committee.

I am pleased to write in support of HB 541. I encourage your support of this important clarification of the Montana Code.

HB 541 would exempt from regulation by Montana Fish Wildlife and Parks the "Agriculture Activity" of trailing livestock. FWP is presently attempting to regulate livestock trailing as a commercial activity, as opposed to an agriculture activity, under its Commercial Uses Rules.

This Legislature has previously passed statutes that Agricultural activities, such as livestock trailing, are not considered a Commercial Use. See the following Statute.

**77-1-902. Definitions.** *As used in this part, unless the context requires otherwise, the following definitions apply:*

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and geothermal resources;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

Furthermore it has been recognized that unnecessary regulation of agricultural activities be avoided in governmental regulation. See the following Statute.

**76-2-901. Agricultural activities -- legislative finding and purpose.** (1) *The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.*

(2) *It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.*

MFWP has continued to purchase and control more land in Montana and should be held to the same standards of management and "Good Neighbor Policy" as the other State

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owned and managed lands. That agency is required to analyze the effects of their purchases on adjacent land owners and users of adjacent land. See the following Statute.

**87-1-241. Acquisition of wildlife habitat -- rules.** (1) Before acquisition of any interest in land for the primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such acquisitions. With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:

- (a) the wildlife populations and use currently associated with the property;
- (b) the potential value of the land for protection, preservation, and propagation of wildlife;
- (c) management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;
- (d) any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;
- (e) any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:
  - (i) tax revenue available for the operation of taxing jurisdictions within the county;
  - (ii) services required to be provided by local governments;
  - (iii) employment opportunities within the counties;
  - (iv) local schools; and
  - (v) private businesses supplying goods and services to the community;
  - (f) a land maintenance program to control weeds and maintain roads and fences; and
  - (g) any other matter considered necessary or appropriate by the commission.
- (2) The analysis made of any proposed acquisition must be made available for review by each owner of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing must be held in the affected area after the analysis has been made available to the public

The trailing of livestock has long been established as a legal right along established public accessed and county roads and stock lanes. Considering this practice or activity a commercial use is not consistent with the established Montana Statutes, nor is it consistent with the Montana Constitution, which requires that this Legislature "enact laws and provide appropriations to protect, enhance, and develop all agriculture". See, Article XII, Section 1 of the Montana Constitution.

In order to protect agriculture from unnecessary government interference, and in order to protect our sheep operations from an environmental review process that is designed to take our trailing right away, please pass this legislation and clarify that livestock trailing is not a commercial use of MFWP managed land.

Regards,

s/s

John Helle

Partner Helle Livestock; Past President Montana Wool Growers Association